



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 9822244

Date: FEB. 26, 2021

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an emergency management specialist, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for exceptional ability classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

### A. Exceptional Ability

The Petitioner maintains that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the official academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).<sup>4</sup>

In the appeal brief, the Petitioner claims that he also meets the certification for a particular profession criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria.

#### 1. Evidentiary Criteria

*A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner presented certificates of completion for "Civilian Response to Active Shooter Events Train-the-Trainer," "Human Trafficking," "Incident Command System (ICS)/Emergency Operations Center (EOC) Interface," "Web EOC," "SANS Securing the Human," "Hurricane Awareness," "Defensive Driving for Light and Medium Duty Vehicles," "Fundamentals of Emergency Management," "National Response Framework" (introductory), "Emergency Planning," "Fundamentals of Risk Management," "National Incident Management System" (introductory), "An In-depth Guide to Citizen Preparedness," "Introduction to ICS," "National Incident Management System Intrastate Mutual Aid" (introductory), and "Weapons of Mass Destruction (WMD)/Terrorism Awareness for Emergency Responders." These certificates represent completion of individual training courses and not a license to

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner presented his Bachelor of Science degree in Homeland Security from [REDACTED] College (2017) as well as his academic transcript.

practice the profession or certification for a particular profession or occupation. Accordingly, the Petitioner has not established that he meets this criterion.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted a January 2018 letter informing him of his selection as “Program Assistant II for the [redacted] Department of Safety, Division of Homeland Security and Emergency Management” at a biweekly salary of \$994.15. He also provided his 2017 U.S. income tax return showing earnings of \$21,556.00. In addition, the Petitioner offered employee pay statements showing biweekly earnings of \$994.18 in March 2018, \$1,009.52 in October 2018, and \$128.33 in November 2018. Furthermore, in response to the Director’s Request for Evidence (RFE), he presented a June 2019 “offer of employment for the position of full-time Probationary Dispatcher” with the [redacted] Police Department at a salary of \$37,264.00 per year and pay statements from July 2019 and August 2019. The Petitioner’s 2019 job offer and pay statements from the [redacted] Police Department, however, post-date the filing of the petition. *See* 8 C.F.R. § 103.2(b)(1).

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field.<sup>5</sup> Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others in his field. Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated that he meets this regulatory criterion.

*Evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E).

In response to the Director’s RFE, the Petitioner provided membership certificates for the International Association of Emergency Managers (July 2019) and the Global Society of Homeland and National Security Professionals (August 2019). These membership certificates post-date the filing of the petition, and therefore the Petitioner has not shown that he was a member in the associations prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

Additionally, the Petitioner submitted account information for his “Civilian Response to Active Shooter Events Train-the-Trainer” training course at [redacted], but he has not demonstrated that this information indicates he is a member of a professional association. While the record includes information about [redacted] and its mission to provide “active shooter response training for first responders,” this documentation identifies [redacted] as a training institution rather than a professional association. The Petitioner therefore has not established that he meets this criterion.

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<sup>5</sup> *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.*  
8 C.F.R. § 204.5(k)(3)(ii)(F).

As evidence for this criterion, the Petitioner provided recommendation letters from various individuals discussing his knowledge and work experience. The Director determined that these letters were not sufficient to demonstrate recognition for achievements and significant contributions to the industry or field. In his appeal brief, the Petitioner contends that he has contributed to the State of [redacted]'s current active shooter protocols, but does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director's findings for this criterion. Nor does the appeal brief even reference the Director's discussion regarding this criterion. Additionally, while the Petitioner asserts that he "has submitted documentation to satisfy this criterion," he does not identify the evidence. Without offering specific arguments to overcome the Director's findings, the Petitioner has not established that he fulfills this criterion.

For the reasons set forth above, the Petitioner has not shown that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).

## 2. Comparable evidence

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of "comparable evidence" if the above standards "do not readily apply to the beneficiary's occupation." A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. 204.5(k)(3)(ii) as well as why the evidence he has submitted is "comparable" to that required under 8 C.F.R. 204.5(k)(3)(ii).<sup>6</sup>

On appeal, the Petitioner states that he has provided "other comparable evidence of eligibility," but he has not demonstrated that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation.<sup>7</sup> He has not sufficiently explained why he has not submitted evidence that would satisfy at least three of the six regulatory criteria. As such, the Petitioner has not shown that he may rely on comparable evidence.

In summary, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) or meets the comparable evidence requirements at 8 C.F.R. § 204.5(k)(3)(iii), and has achieved the level of expertise required for exceptional ability classification.

## B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

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<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 22.

<sup>7</sup> "General assertions that any of the six objective criteria described in 8 CFR 204.5(k)(3)(ii) do not readily apply to the alien's occupation are not probative and should be discounted." See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 22.

Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, he indicated that he "intends to continue his work in the area of homeland security, with a particular emphasis on active shooter scenarios and with regard to houses of worship in particular." He asserted that his proposed endeavor involves "the rising problems surrounding active shooters in our houses of worship, schools, recreational facilities to name a few . . . . Unfortunately, the active shooter field is not getting any smaller and personnel like myself will continue to be in demand by providing the necessary tools and experience to keep millions of people safe." The Petitioner further explained that he seeks to work "for Federal Homeland Security, Federal Emergency Management Agency, or any other major organization" responsible for protecting the American people.<sup>8</sup> In addition, the Petitioner stated: "I would like to establish a specialized organization founded by myself that will solely focus on preventative consulting for houses of worship across the United States. The consulting organization will provide specific training; advice, classes, threat assessments and advice specifically adhered to the religious communities."<sup>9</sup>

In denying the petition, the Director concluded that the Petitioner had not sufficiently identified his proposed endeavor, and therefore he did not satisfy *Dhanasar*'s first prong. In his appeal brief, the Petitioner argues that he "submitted a detailed business plan with regard to his intended specific endeavor: To provide the United States with active shooter protocol consulting services to places of worship. The [Director's] denial does not even mention this important submission." The Petitioner also points to letters of support discussing his knowledge, skills, and work experience, but these letters do not explain the national importance of his proposed work under the *Dhanasar*'s first prong. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the

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<sup>8</sup> As mentioned previously, the Petitioner served as a Program Assistant II for the [redacted] Department of Safety from February 2018 until November 2018. In June 2019, he began full-time employment as a Probationary Dispatcher with the [redacted] Police Department. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

<sup>9</sup> The record includes a June 2019 business plan for his company which provides market analyses, information about the proposed company and its services, business development goals and objectives, a description of the Petitioner's work experience, a marketing plan, and staffing projections. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ three or four personnel in addition to himself.

Petitioner's statements reflect his intention to provide valuable active shooter protocol consulting services to future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer or future clientele to impact his field or U.S. security interests more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels and consulting activity stand to provide substantial economic benefits in [REDACTED] or the United States. While the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where he plans to operate his company is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's consulting projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.